

PTO/SB/33 (07-05)

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**STATEMENT OF ARGUMENTS IN SUPPORT OF  
PRE-APPEAL BRIEF REQUEST FOR REVIEW**

The following listing of clear errors in the Examiner's rejection and his failure to identify essential elements necessary for a *prima facie* basis of rejection is responsive to the fourth and non-final Official Action mailed August 27, 2007 (Paper No. 20070822).

**Error #1. The Examiner has failed to comply with the first requirement of examination, i.e., properly construe a means-plus-function claim**

Independent claim 1, from which every other claim depends, recites "an illumination means for illuminating a scene with an array of spots of light." The use of the word "means" is a rebuttable presumption that Applicants intended §112 (6<sup>th</sup> paragraph) format. The absence of structure for providing the claimed functional result further confirms the 6<sup>th</sup> paragraph treatment. Accordingly, the Examiner is obligated to construe the "illumination means" to cover corresponding structure disclosed in Applicants' specification and equivalents thereto. Applicants' specification discloses a projector system for projecting "an array of spots of light" and discloses a number of different embodiments. Common among the embodiments is the projection of "an array of spots of light."

Alternatively, notwithstanding the use of the term "means" should the Examiner believe the claim provides a sufficient structural definition in the latter portion of the claim (beginning "wherein the illumination means comprises . . ."), this must be construed as requiring a structure which illuminates a scene "with an array of spots of light."

Thus, whether or not construed as a "means" claim, there is no doubt that Applicants' independent claim 1 and all claims dependent thereon must be properly construed to include a structure which illuminates a scene "with an array of spots of light."

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Because the Examiner has not properly construed claim 1 to require "an array of spots of light," his rejection of claims 1-9 and 11-15 under 35 USC §103 over the Immega reference is fatally flawed.

**Error #2. The Examiner clearly misunderstands the elements recited in Applicants' independent claim 1**

Claim 1 recites at least three elements, i.e., "an illumination means," a "detector" and "a mask." As noted above, the Examiner's failure to properly construe the means-plus-function language is an example of the Examiner's misunderstanding of claim 1. The claimed "detector" is a structure for receiving "light reflected from the scene." Antecedent basis for the scene is in the previous sentence which is an illumination means for illuminating "a scene with an array of spots of light." The interrelationship between the mask, the scene and the detector is recited in line 4 of claim 1, i.e., the mask is "located in the optical path of light from the scene to the detector."

The Examiner admits on page 2 of the Official Action that "Immega does not explicitly disclose the portion of the mask (3) in light path (34a) to have substantially reflective sides." Firstly, the Examiner ignores the requirement that the mask be located in the optical path of light from "the scene to the detector." Item 3 in Immega, alleged to be the mask, is not located between the optical path of light from the scene (which is illuminated with an array of spots of light) to the detector.

Secondly, Applicants' independent claim does not require that the mask "have substantially reflective sides" as the Examiner contends is missing from the Immega reference. This evidences a clear misunderstanding of Applicants' independent claim 1. Claim 1 specifies that the "illumination means" comprises a light source, a light guide and that the light guide has a

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tube "having substantially reflective sides." Thus, it is the light guide (a part of the illumination means) that has the "substantially reflective sides" and not the "mask."

The Examiner does not identify the light in Immega's Figure 1 and thus this cannot teach the claimed invention. In Figure 2, there is a light source 33, but this light source has nothing to do with illuminating a scene with an array of spots of light. Similarly, the light sources 35 and indeed light source 33a in Figure 3 have nothing to do with illuminating a scene with an array of spots of light. Accordingly, where or how the Examiner believes Immega to disclose a mask located in the optical path of light "from the scene to the detector" which provides "an array of spots of light" is not seen and clarification requested.

Absent a disclosure of Applicants' claimed "mask" and its claimed interrelationship between a scene illuminated with spots of light and the detector, there is simply no support for any rejection of claim 1 under 35 USC §103.

**Error #3. The Examiner fails to disclose any portion of the Immega reference tending to suggest Applicants' claimed "illumination means"**

The Examiner's admission in the previous Official Action mailed February 7, 2007 that "Immega et al does not explicitly disclose the use of an illumination means with a light source arranged to illuminate the input face of a light guide" is very much appreciated. Additionally, in the present Official Action, the Examiner's admission that "Immega also does not explicitly disclose the use of projection optics" is very much appreciated.

However, in spite of the above admissions, the Examiner still suggests that Immega discloses or renders obvious a "light source with a mask" to form an illumination means for illuminating an object "as a scene with an array of spots of light." Not only is this logic traversed by the Examiner's own admissions in the present and previous Official Action, it is a

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misunderstanding of Applicants' claim. Applicants' claimed illumination means is not formed by a light source with a mask as suggested by the Examiner, but rather by the illumination means by itself.

The illumination means stands on its own and in proper means-plus-function form covers the associated structures disclosed in Applicants' specification and equivalents thereto. Certainly required of any "illumination means" is a structure which illuminates "a scene with an array of spots of light." The Examiner identifies no teaching in the Immega reference which suggests any structure for "illuminating a scene with an array of spots of light."

The Examiner has previously alleged that Figure 4 discloses an illumination means illuminating a scene with an array of spots of light. While Figure 4 does appear to teach light source 35 which illuminates viewed object 6 with the light from a variety of passageways in mask 3, this embodiment fails to teach Applicants' claimed "mask" in the optical path from the scene to the detector. If the mask is item 3 as contended by the Examiner on page 2 of the Official Action, then there is no illumination means which illuminates a scene with an array of spots. If the light source 35 combined with mask 3 is a means for illuminating a scene with an array of spots of light, then there is no separately recited "mask" between the scene and the detector.

Moreover, there is no disclosure of the light source comprising a tube having "substantially reflective sides" and arranged with projection optics so as to project an array of distinct images of the light source towards the scene. Accordingly, the claimed "light source" is not disclosed in Immega.

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### SUMMARY

The Examiner admits both in the present and previous official actions that Immega fails to teach the claimed "illumination means." The Examiner has failed to articulate his construction of the "illumination means" to require projection of "spots of light" and, in any event so that this may be disputed by the Applicant. The Examiner has not demonstrated that any other reference supplies any teaching of "spots of light" (the Examiner has dropped his previous reliance upon Campbell and has reverted to the basis for rejection contain in the first official action).

Moreover, in view of the Examiner's admissions that Immega does not teach all of the claim 1 invention, his assertions that it would be obvious to one of ordinary skill (a) to use a tube with substantially reflective sides as a light source and (b) to use projection optics are respectfully traversed under MPEP §2144.03, requiring either a showing in Immega or the citation of new references.

The Examiner fails to provide any "reason" or "motivation" for combining the references and actually admits a motivation for not combining these references ("preventing any shadowing effects" Final Rejection, page 3, lines 8-9).

As a result of the above, there is simply no support for the rejection of Applicants' independent claim 1 or claims dependent thereon under 35 USC §103. Applicants respectfully request that the Pre-Appeal Panel find that the application is allowed on the existing claims and prosecution on the merits should be closed.